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IN THE

Supreme Court of the United States

CHARLES THOMAS DICKERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF FEDERAL BUREAU OF INVESTIGATION AGENTS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Of Counsel
LYLE ROBERTS
1806 W. Abingdon Dr.
Apt. 202
Alexandria, VA 22314

ROBERT F. HOYT
Counsel of Record
KARAN BHATIA
HESTER PEIRCE
CHRISTOPHER SIMKINS
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Counsel for Amicus Curiae

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BRIEF OF FEDERAL BUREAU OF INVESTIGATION AGENTS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Federal Bureau of Investigation Agents Association ("FBIAA") submits this *amicus curiae* brief in support of the decision of the United States Court of Appeals for the Fourth Circuit and in opposition to both petitioner, Charles Thomas Dickerson, and respondent, United States of America. By letters filed with the Clerk of the Court, petitioner and respondent have consented to the filing of this brief.[1]

[1] This brief was prepared in whole by the counsel listed on the cover. No person or entity, other than the *amicus curiae*, its members, and its counsel, made a monetary contribution to the preparation or submission of this brief.

INTEREST OF *AMICUS*

The FBIAA consists of 9800 current and former Federal Bureau of Investigation ("FBI") agents and includes approximately 75 percent of current FBI agents. Its mission is to ensure that agents employed by the FBI are treated fairly and to assist them in carrying out their law enforcement duties in an effective manner and consistent with the highest standards of professional conduct. The organization was founded in the aftermath of a highly politicized investigation in the late 1970s by the United States Attorney General in which individual FBI agents who had followed directives issued by FBI Headquarters were unjustly targeted for investigation and prosecution. The agents formed the FBIAA to represent their interests in matters in which the Government refused for political or other reasons to advocate on behalf of the agents. This is one such matter.[2]

The FBIAA has two specific interests in being heard in this case. First, the FBIAA believes it is important to clarify the factual record with respect to the manner in which Special Agent Christopher Lawlor ("Agent Lawlor") handled the investigation of the bank robbery underlying this case. Petitioner has attempted to characterize Agent Lawlor's behavior as inappropriate, Petitioner's Brief at 4-6, and the Government has abandoned any efforts to highlight the voluntariness of the statements made by Charles Dickerson.

The FBIAA's second interest in filing this brief is to challenge assertions made by the Government and former Attorney General Griffin Bell, *et al.*, in their briefs before the

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[2] The FBIAA is not alone in feeling betrayed by the Government's refusal to stand behind section 3501. The chief attorney in the appellate section at the United States Attorney's Office resigned over this matter. *See* William G. Otis, Op-Ed, *Miranda: Morals and Marbles*, Wash. Post, Nov. 24, 1999, at A23.

Court. Both briefs suggest that the law enforcement community uniformly approves of the current *Miranda* rules and sees no need to apply 18 U.S.C. § 3501 in federal criminal cases. In fact, the FBIAA and its members strongly disagree with this position.[3] FBI agents support the application of section 3501 because the statute, while creating strong incentives to provide *Miranda* warnings, supports the efforts of law enforcement by emphasizing the constitutional rights the warnings are designed to safeguard, rather than the warnings themselves.

STATEMENT OF THE CASE

The facts of this case offer a perfect example of why section 3501 should be upheld. While in custody, Dickerson made a confession. The District Court found it had been made voluntarily.[4] The court suppressed the confession, however, because it believed the law enforcement agents had failed to give Dickerson timely *Miranda* warnings.

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[3] The FBIAA is not alone in its support of the Fourth Circuit's decision upholding section 3501. The International Association of Chiefs of Police, the National Association of Police Organizations, the Fraternal Order of Police, and the National District Attorneys Association, and numerous other state prosecuting associations have likewise filed briefs supporting the Fourth Circuit's decision. These organizations collectively represent thousands of law enforcement personnel, in contrast to the relatively small number of *individuals* who have joined the Bell Brief.

[4] The District Court's acknowledgment of the voluntariness of Dickerson's confession was implicit in the District Court's reliance on *United States v. Elie*, 111 F.3d 1135 (4th Cir. 1997), to reject his argument that his accomplice's testimony was tainted by an alleged violation of his constitutional rights. J.A. 158 n.1. *See United States v. Dickerson*, 166 F.3d 667, 676 (4th Cir) (noting that "[b]ecause Dickerson's statement was voluntary under the Fifth Amendment, the district court concluded that the evidence found as a result thereof was admissible at trial"), *cert. granted in part*, 120 S. Ct. 578 (1999).

In fact, as the Government itself urged in a petition for reconsideration to the District Court and as the following summary of facts explains, there is strong reason to believe that no departure from *Miranda* procedures occurred at all. Dickerson himself indicated in a handwritten note that he had timely received his warnings. The Government's failure to introduce this and other probative evidence in the suppression hearing resulted in a conclusion by the District Court that a technical violation of Miranda had occurred and, accordingly, that it was compelled to suppress Dickerson's voluntary confession. It is precisely situations such as this that section 3501 is designed to remedy.

In the late afternoon of January 27, 1997, Agent Lawlor and ten other federal and local law enforcement officers arrived in the Maryland neighborhood where Charles Thomas Dickerson lived. J.A. 141. Witnesses had observed a car registered to Dickerson near the scene of the robbery of a bank in Alexandria, Virginia three days earlier. *Id.* After locating the car and looking around the neighborhood, several of the officers approached Dickerson's door. *Id.* The agents knocked and identified themselves. *Id.* Dickerson, through the closed door, told the agents to wait. J.A. 39. A few minutes later, Dickerson opened the door and the agents entered.[5] *Id.* The agents told Dickerson he was not under arrest, but asked him to accompany them voluntarily to the FBI field office to discuss the bank robbery. J.A. 101-02 (Affidavit of Thomas O. Durkin ¶ 5). Dickerson agreed and, followed by Agent Lawlor and one or two other agents, went to the bedroom to get his coat. J.A. 141. Underneath the coat was over $500, which Dickerson claimed he had won gambling in Atlantic City. *Id.* The

[5] Dickerson subsequently told Agent Lawlor that while the agents waited outside, he hid the gun he had in hand when the agents knocked on the door. J.A. 63-64. In his testimony before the District Court, Dickerson denied having said this. J.A. 64.

agents asked Dickerson whether they could search his apartment. J.A. 142. Dickerson declined. *Id.* Dickerson nevertheless rode with Special Agents Lawlor and Armin Showalter to the FBI field office. J.A. 102 (Durkin Aff. ¶ 7). Detective Thomas O. Durkin, a twenty-year veteran of the Alexandria Police Department, followed in a separate car. *Id.* Four FBI agents remained in the vicinity of Dickerson's apartment. J.A. 108 (Affidavit of Lawrence Kevin Wenko ¶ 6).

Once at the office, Agent Lawlor and Detective Durkin took Dickerson to an interview room, but reminded him that he was free to go and, should he choose to leave, would be given a ride home. J.A. 102 (Durkin Aff. ¶ 8). Dickerson told Agent Lawlor and Detective Durkin that he had been near the bank on the morning of January 24, 1997, but denied involvement in or knowledge of the robbery. J.A. 142.

Agent Lawlor, armed with the knowledge that Dickerson had been in the vicinity of the bank at the time of the robbery, called Magistrate Judge James E. Kenkel to get a warrant to search Dickerson's apartment. J.A. 142. Agent Lawlor explained that a telephonic warrant was necessary because Dickerson was free to leave at any time and Agent Lawlor was worried that, should Dickerson leave, critical evidence would be destroyed. *Id.* The magistrate judge determined that there was probable cause to search Dickerson's apartment and issued a warrant for that purpose at 8:50 p.m. J.A. 142-43. Between 9:00 and 9:15 p.m., Agent Lawlor contacted Special Agent Lawrence Kevin Wenko, who had remained in the vicinity of Dickerson's apartment. J.A. 108 (Wenko Aff. ¶ 7). The search by Wenko and the other agents proved fruitful: among other items, they found a loaded semi-automatic .45 caliber handgun allegedly used in the robbery, dye-stained money

and a bait bill, which was traced to another bank robbery.[6] J.A. 144.

After notifying the agents that had remained in Dickerson's neighborhood of the search warrant, Agent Lawlor returned to the interview room to tell Dickerson that his apartment would be searched. J.A. 143. The District Court found that, upon hearing about the search, Dickerson decided to make a statement. *Id.* According to the District Court's findings, a half hour long interview followed. J.A. 155. The District Court found that Dickerson did not receive his *Miranda* warnings until the interview was over. *Id.*

The evidence introduced by the Government after the District Court had made its finding with respect to the *Miranda* procedures supports the contrary sequence of events described below.[7] After Agent Lawlor informed Dickerson that his apartment was being searched, Dickerson decided he wanted to give a statement. J.A. 143. Agent Lawlor left Dickerson and Detective Durkin alone. J.A. 102 (Durkin Aff. ¶ 10). When he returned, Dickerson was read his *Miranda* rights, *id.*, and at 9:40 p.m. Dickerson signed a waiver of those rights. J.A. 21. Dickerson did not alter his earlier story. J.A. 102 (Durkin Aff. ¶ 10). Agent Lawlor left the room again in response to a page. *Id.* During Agent Lawlor's absence, Detective Durkin asked Dickerson to write down what he had done during the day. J.A. 103

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[6] Aside from linking him to bank robberies, the evidence discovered in Dickerson's apartment tied him to an armed car-jacking, during which a gun later used to murder an off-duty correctional officer was taken. J.A. 86. Additional items further implicating Dickerson in this or other bank robberies later were seized from the trunk of Dickerson's car. J.A. 144-45.

[7] This evidence included the affidavits of Detective Durkin (J.A. 101-04) and Agent Wenko (J.A. 107-12) and Dickerson's handwritten note described below (J.A. 105).

(Durkin Aff. ¶ 11). Dickerson composed the following note (J.A. 105):

> I was read my rights at 7:30[8] But I was here at 5:30. I talked to the two Detectives[,] Detective Thomas Durkin and Agent Lawlor [for] two and a half hours and then was asked to take a polygraph test[.] I declined because after two hours I had knowledge of the bank robbery. I told them I know nothing of the bank robbery that happened Friday. Be for[e] today I didn't have any knowledge of the bank robbery.

Upon returning to the room, Agent Lawlor told Dickerson that a bait bill from another bank robbery had been found in his apartment. J.A. 103 (Durkin Aff. ¶ 12). Dickerson then confessed that he had been near the bank in Alexandria, Virginia on January 24, 1997, with "Jimmy" (later identified as James Rochester), someone he knew to be a bank robber.[9] J.A. 103 (Durkin Aff. ¶ 12).

Unfortunately, the District Court declined to consider the newly introduced evidence suggesting that Dickerson timely received his *Miranda* warnings; it found that the delay in introducing the evidence was attributable to the Government's lack of preparation for the initial suppression hearing.[10] J.A. 159-60. The District Court's determination

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[8] As Detective Durkin explained, Dickerson did not correctly estimate the time at which he wrote the note. J.A. 103 (Durkin Aff. ¶ 11). The Fourth Circuit acknowledged that the handwritten statement, regardless of its timing problems, "corroborates the agents' position that Dickerson was read his *Miranda* warnings prior to his confession." *Dickerson*, 166 F.3d at 677 n.8.

[9] Dickerson had assisted Rochester in washing the dye off bills obtained in earlier robberies. J.A. 103 (Durkin Aff. ¶ 12).

[10] At the hearing on the motions for reconsideration, the District Court observed that "I suspect it's one of these deals where they threw the file at [the Assistant United States Attorney] at 4 o'clock on the day before." J.A. 129.

that Dickerson did not receive the *Miranda* warnings in a timely fashion, however, does not detract from the undisputed evidence that Dickerson spoke with Agent Lawlor and Detective Durkin voluntarily.

We recount these facts, not to raise in this Court our dispute with the District Court findings, but to emphasize precisely why this case demonstrates the wisdom and the need for section 3501. No one disputes that Dickerson's confession was voluntary, and not the result of any coercion. The only issue in dispute was the technical issue of whether he was read his *Miranda* warnings before or after the confession. Under *Miranda*, the District Court ended its inquiry and suppressed Dickerson's confession once the Court determined, apparently on an incomplete record, that the warnings were given after the confession. Under section 3501, the Court's decision on suppression would not have been held hostage to that technical point, but instead would have been based on the broader constitutional principle of whether or not the confession was voluntary.

SUMMARY OF ARGUMENT

On behalf of its constituent members, who include approximately 75 percent of all active FBI agents, the FBIAA offers this brief in support of the Fourth Circuit's decision upholding 18 U.S.C. § 3501 as the standard governing the admission into evidence of voluntary confessions in federal criminal cases.[11]

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established a set of procedures that must be followed when a suspect is in police custody before the police may elicit a confession: The police must give certain warnings and ask

[11] *See Dickerson*, 166 F.3d at 684-92.

whether the suspect agrees to waive his rights. If the suspect refuses to waive his rights (*i.e.*, declines to give his permission to be questioned), the police may not question the suspect. An accompanying exclusionary rule requires the suppression of the suspect's confession if the police deviate from these procedures, without regard to the actual voluntariness of the confession.

Subsequent decisions by the Court, however, have stressed that the *Miranda* procedures are not themselves constitutional rights, but rather are "recommended 'procedural safeguards'"[12] that help protect an underlying constitutional right – *i.e.*, the Fifth Amendment right against self-incrimination. Because the safeguards are not constitutionally required, they can be superseded or altered by Congress. Congress did just that in enacting section 3501, which directs courts to admit into evidence confessions that are "voluntary," as determined by weighing "all the circumstances surrounding the giving of the confession," including the giving of *Miranda* warnings and the presence of counsel during questioning. The Fourth Circuit held that section 3501 is a constitutional exercise of Congress's power and that this statute establishes the standard for the admission of confessions in federal criminal cases. For the reasons stated in the brief filed by Professor Paul Cassell, the FBIAA believes that the Fourth Circuit's decision is correct.

Aside from the question of section 3501's validity, the FBIAA supports section 3501 as a matter of policy because it remedies the overinclusive application of *Miranda*'s exclusionary rule, yet still provides protections for individuals' constitutional rights without materially

[12] *United States v. Davis*, 512 U.S. 452, 457-58 (1994); *see also Miranda*, 384 U.S. at 444 (requiring the "use of *procedural safeguards* effective to secure the privilege against self-incrimination") (emphasis added).

complicating the procedures law enforcement must follow in eliciting confessions. In expressing its support for section 3501, the FBIAA makes three points. First, by affirming the Fourth Circuit's decision and upholding section 3501, the Court will not do away with adherence to *Miranda*'s core procedural safeguards.[13] To the contrary, section 3501 creates a powerful incentive for law enforcement officers to follow these procedures by making them factors in determining the voluntariness of a confession. This incentive is bolstered by non-statutory incentives. For example, regardless of the status of section 3501, the FBI – with the support of its agents – is committed to maintaining these safeguards. This commitment stems not only from a recognition of the legal benefits of the safeguards as evidence of voluntariness, but also from its respect for constitutional rights and public expectations.

Second, the FBIAA challenges the assertion of Dickerson, the Government, and supporting *amici* that upholding section 3501 would blur the "bright line" that courts have used in assessing the admissibility of a confession, thereby complicating the job of law enforcement officers. This argument ignores the fact that even when

[13] In the brief filed by former U.S. Attorney General Griffin Bell, *et al.*, *amici* imply as a basis for their arguments that if section 3501 is the governing standard, *Miranda*'s procedural safeguards, including the giving of warnings, will no longer be followed. *See* Bell Brief at 17-18 (some law enforcement agencies "may" choose to voluntarily continue to give *Miranda* warnings, but some "may short-sightedly dispense with warnings and adopt more aggressive interrogation techniques"). In making these assertions, *amici* claim to be speaking for the vast majority of law enforcement. *See id.* at 1, 7-8. However, as noted above, the FBIAA, as the representative of 75 percent of all active FBI agents, is better positioned to speak for the federal agents who actually deal with *Miranda* and its aftermath on a day-to-day basis. The FBIAA asserts, for the reasons discussed in this brief, that *Miranda*'s safeguards will continue to be followed, regardless of whether the Court affirms the Fourth Circuit's decision.

Miranda's safeguards are followed, a confession still cannot be admitted as evidence until a trial judge determines that the confession is voluntary under the Fifth Amendment. In determining the voluntariness of the confession, a trial judge applies the same "totality of the circumstances" analysis required by section 3501. Since the "voluntariness" of a confession is already a prerequisite to its admission, a fact of which law enforcement officers are keenly aware, section 3501's voluntariness standard will not place any additional burdens on law enforcement.

Finally, the FBIAA supports the application of section 3501 because it counteracts the overinclusiveness of *Miranda*'s exclusionary rule, which calls for voluntary confessions to be suppressed whenever there is a technical violation of *Miranda*'s procedural safeguards. By basing the test for the admission of a confession on whether there has actually been a violation of the Fifth Amendment, section 3501 makes for better law enforcement policy by lessening the harsh and unfair consequences that result in the rare instance a law enforcement agent inadvertently fails to follow *Miranda*'s safeguards. It also brings the exclusionary rule applied to confessions into harmony with the exclusionary rule applied in other criminal procedure contexts arising under the Fourth, Fifth, and Sixth Amendments.

ARGUMENT

I. THE CORE PROCEDURAL SAFEGUARDS UNDER *MIRANDA* WILL CONTINUE TO BE FOLLOWED UNDER SECTION 3501.

The briefs filed by Dickerson and supporting *amici*, assume that if the Fourth Circuit decision is affirmed and section 3501 upheld, federal law enforcement will stop following

Miranda's core procedural safeguards.[14] This assumption is wrong. For a variety of reasons, law enforcement will continue to adhere to core *Miranda* safeguards.

A. Section 3501 Creates Strong Incentives for Federal Law Enforcement To Continue To Follow *Miranda*'s Core Procedural Safeguards.

Section 3501 directs courts to admit into evidence confessions that are "voluntarily given" and states that whether a particular confession is voluntary should be determined by weighing "all the circumstances surrounding the giving of the confession." In determining voluntariness, the trial judge "shall" examine a number of factors, including:

> (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him[;] (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

18 U.S.C. § 3501(b)(3)-(5). These factors encapsulate the substance of *Miranda*'s core procedural safeguards.

By explicitly including *Miranda*'s procedural safeguards as factors in the voluntariness analysis, section 3501 reflects the holding of numerous cases that, under the Fifth

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[14] *See* Petitioner's Brief at 14 ("While the Court invited alternative procedures [for providing warnings], it did not invite procedures that dispensed with apprising persons in custody at the outset of their rights and assuring that their exercise of those rights would be honored."); Bell Brief at 17-19.

Amendment, the giving of warnings is significant proof that the confession was voluntary.[15] Law enforcement officers, understanding the relative weight given to warnings and the presence of counsel under section 3501, will continue to view the core *Miranda* procedural safeguards as the best way to ensure that any subsequent confession is found to be voluntary.[16] Section 3501 creates a "win-win" situation: federal law enforcement officers will continue to give the *Miranda* warnings, but in cases involving a technical departure from the *Miranda* safeguards, the constitutional requirement of voluntariness will be the basis for determining the admittance of any confession into evidence.

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[15] *See, e.g., Beckwith v. United States*, 425 U.S. 341, 348 (1976) ("Proof that some kind of warnings were given or that none were given would be relevant evidence . . . on the issue of whether the questioning was in fact coercive."); *Villafuerte v. Stewart*, 111 F.3d 616, 626 (9th Cir. 1997) ("In analyzing whether statements were voluntary, we must consider the totality of the circumstances. . . . We conclude [the criminal defendant] was fully apprised of his *Miranda* rights and voluntarily waived them."); *Reese v. Delo*, 94 F.3d 1177, 1184 (8th Cir. 1996) (under a "totality of the circumstances" review, "[t]he fact that [*Miranda*] warnings were given weighs in favor of a voluntariness finding"); *Roman v. Florida*, 475 So. 2d 1228, 1232 (Fla. 1985) ("Proof that *Miranda* warnings were given is relevant in determining whether there was coercion. Proof even of partial warnings of constitutional rights is a circumstance relevant to a finding of voluntariness."); *see also* Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 6.2(c), at 298 (2d ed. 1992) ("[T]he fact the warnings were given is an important factor tending in the direction of a voluntariness finding.").

[16] *See* Brief of United States at 33 (where a criminal suspect challenges the admissibility of a confession despite being given *Miranda* warnings, "compliance with *Miranda* helps ensure that statements will be found admissible because they were voluntary").

B. The FBI and Other Federal Law Enforcement Agencies Will Continue To Insist that Their Officers Follow *Miranda*'s Core Procedural Safeguards.

The FBI, with the support of its agents, and other federal law enforcement agencies will continue to insist that the core *Miranda* procedural safeguards are followed. As stated by the General Counsel of the FBI in an October 19, 1999, memorandum submitted to the Department of Justice: "Whether or not the *Miranda* requirements remain in effect after *Dickerson*, the FBI will continue to warn subjects of their rights to silence and counsel, and obtain waivers of those rights, prior to custodial interrogation."[17] Apart from the legal incentive created by section 3501, *see supra* Part I.A, there are three significant reasons why the FBI and other federal law enforcement agencies will maintain their current procedures if the Court upholds section 3501. First, the FBI procedure of giving warnings to suspects pre-dates the *Miranda* decision and is ingrained in the FBI's internal policies. Like other federal law enforcement agencies, the FBI will continue to train its agents to follow *Miranda*'s procedural safeguards. Second, federal prosecutors will expend their limited resources more readily on cases in which indicia of voluntariness, including the core *Miranda* safeguards, are present. Finally, public expectations will encourage continued use of *Miranda*'s core procedural safeguards.

The FBI has a long history, predating the *Miranda* decision, of giving warnings to suspects in order to protect their constitutional rights. As the Court explained in *Miranda*, J. Edgar Hoover, Director of the FBI, had instituted warnings to suspects as early as 1952, although

[17] *See* Memorandum from Larry R. Parkinson, General Counsel for the FBI, to Eleanor D. Acheson, Assistant Attorney General at 1 (Oct. 19, 1999) (filed with the Court by the Government on February 24, 2000) [hereinafter FBI Memorandum].

without an accompanying exclusionary rule.[18] The FBI stressed that "'Special Agents are taught that any suspect or arrested person, at the outset of an interview,'" must be informed of his right to remain silent and to have "'the services of an attorney of his own choice.'" *Miranda*, 384 U.S. at 483 n.54. The purpose behind these warnings was to "'maintain inviolate the historic liberties of the individual'" and to enforce the law without "'destroy[ing] the dignity of the individual.'" *Id.* (quoting Hoover).

Likewise, today each FBI agent is trained to respect individual rights while seeking confessions. The FBI's current training materials state:

> The most important limitations on the admissibility of an accused's incriminating statements are the requirements that they be voluntary; that they be obtained without violating his right to remain silent; and that they be obtained without violating his right to a lawyer.

Legal HandBook for Special Agents § 7-1 (Mar. 7, 1997).[19] Agents are specifically told that "[i]t is the policy of the FBI

[18] While the *Miranda* decisions states that the FBI warnings under Hoover were accompanied by a cutting off of questioning once a suspect asked for a lawyer, *see Miranda*, 384 U.S. at 485-86 (quoting a letter sent from the FBI to the Solicitor General in connection with the *Miranda* case), members of the FBIAA who were working as agents prior to the *Miranda* decision do not remember such a rule. Their recollection is that the *Miranda* decision materially altered the landscape of law enforcement with regard to questioning suspects. Moreover, even as explained in *Miranda*, Hoover's rule was not nearly as broad with respect to cutting off of questioning as the subsequent expansions of this rule in *Edwards v. Arizona*, 451 U.S. 477 (1981), *Arizona v. Roberson*, 486 U.S. 675, 682-83 (1988), and *Minnick v. Mississippi*, 498 U.S. 146 (1990). *See infra* Part III.B.

[19] These materials make no reference to *Miranda*, but simply assert that these procedures are part of the FBI's internal policies.

that no attempt be made to obtain a statement by force, threats, or promises," and that it is entirely up to the individual suspect, "after being advised of his/her rights," whether to give a confession or invoke the right to silence. *Id.* § 7-2.1(1). Agents are instructed that "an accused in custody is entitled to be warned of his right to remain silent and his right to an attorney" before any interrogation begins. *Id.* § 7-3.1.[20]

The FBI's policy dictating that agents give warnings is derived not only from a respect for individual rights, but also is meant to ensure that a court will find any subsequent confession voluntary. The *Legal HandBook* specifically instructs agents that the "[a]dvice of rights" is an important element in making sure that confessions are "the result of 'free and unconstrained choice,'" and that the giving of warnings will be used as a factor by courts in their "'totality of the circumstances'" analysis. *Id.* § 7-2.3. Agents face disciplinary sanctions for gross violations of these FBI procedures. In short, these procedures are deeply ingrained in the FBI's culture and, as the FBI has stated, it has no intention of changing them if section 3501 is upheld, nor would the FBIAA urge any such change.[21]

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[20] In the *amicus* brief filed by the ACLU, the argument is made that *Miranda* warnings are still needed today because many law enforcement manuals encourage police officers to use coercive tactics to gain confessions. *See* ACLU Brief at 15-16. The FBIAA will leave it to organizations representing state law enforcement agencies appearing as *amici* to speak for themselves. The FBI and its agents eschew the use of such tactics. The FBI has consistently maintained a policy of respecting constitutional rights and, in fact, spends much effort in training agents on conducting interrogations with the utmost professionalism within the parameters the law has set.

[21] *See supra* note 17 and accompanying text. The Court has noted law enforcement's general willingness to respect individuals' constitutional rights and to provide safeguards for doing so, such as the giving of warnings:

Although the above discussion is confined to the FBI's procedures, other federal law enforcement agencies will have similar incentives to leave in place their procedures for adhering to the *Miranda* safeguards.[22] Overall, therefore, the Court's decision in this case is unlikely to affect the methods employed by federal law enforcement agencies to protect the constitutional rights of suspects.

More generally, federal law enforcement agents are faced with increasing pressure to bring "air tight" cases devoid of technical difficulties to federal prosecutors. Under the current *Miranda* regime, a federal prosecutor likely will not pursue a case that relies on the defendant's confession if there is any chance that the defendant will be able to invoke *Miranda*'s exclusionary rule.[23] While it is true that under

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> We must remember in this regard that *Miranda* came down some 27 years ago. In that time, law enforcement has grown in constitutional as well as technological sophistication, and there is little reason to believe that the police today are unable, or even generally unwilling, to satisfy *Miranda*'s requirements.

Withrow v. Williams, 507 U.S. 680, 695 (1993).

[22] Other federal agencies, in addition to the FBI, have expressed a commitment to continue following *Miranda*'s safeguards under section 3501. *See* Memorandum from Robert C. Gleason, Deputy Chief Counsel for the Drug Enforcement Agency, to Patty Stemler, Chief of the Appellate Section, Criminal Division, Department of Justice (1998) (filed with the Court by the Government on February 24, 2000) ("Regardless of any change in the rule by the Supreme Court, DEA will undoubtedly counsel its Agents to continue to provide *Miranda* warnings to all custodial subjects that they seek to question.") [hereinafter 1998 DEA Memorandum].

[23] Former Attorney General Benjamin Civiletti acknowledges as much in his *amicus* brief. He states that federal prosecutors have tremendous incentives to take cases where *Miranda* warnings have been given because this helps assure that a "critical aspect of the government's proof [*i.e.*, a voluntary confession] is admissible." Civiletti Brief at 5. While Mr. Civiletti's comments are aimed at the current regime under *Miranda*, his point translates into the section 3501 context and suggests that there

section 3501 prosecutors will more readily accept cases in which confessions were voluntary despite a technical violation of the *Miranda* safeguards, given the need for proof of voluntariness under section 3501, and the legal and practical reality that the giving of warnings helps provide this proof, federal prosecutors will continue to put pressure on law enforcement to follow *Miranda*'s procedural safeguards.[24]

Finally, federal law enforcement agencies will be encouraged to follow *Miranda*'s core procedural safeguards by the public's expectation that suspects be treated fairly and within the bounds of the law. Dickerson, the Government, and supporting *amici* have identified the increase in public confidence in law enforcement attributable to the provision of *Miranda* warnings. The FBIAA agrees that the use of *Miranda* warnings has enhanced the public's perception of the professionalism of law enforcement officers. There is no reason to believe that the FBI or other federal law enforcement agencies would compromise these gains by refusing to give the warnings under a section 3501 regime. Section 3501, with its totality of the circumstances approach, enhances the need for federal law enforcement agencies to be vigilant in fostering a favorable public perception of their behavior towards suspects.

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will continue to be such pressure on federal prosecutors, and hence federal law enforcement, to give *Miranda* warnings.

[24] In the brief filed by former Attorney General Bell, *amici* argue that if *Miranda*'s safeguards are not mandatory, "the prosecutor's evidentiary interest in assuring that warnings have been provided will become attenuated." Bell Brief at 18. The truth is exactly the opposite. As explained above, prosecutors will have tremendous incentives to continue putting pressure on law enforcement agents to follow *Miranda*'s safeguards as the surest way to prove voluntariness under section 3501.

II. APPLICATION OF SECTION 3501 WOULD EXPLICITLY ENCOURAGE FEDERAL LAW ENFORCEMENT OFFICERS TO FOCUS THEIR EFFORTS ON ENSURING THAT CUSTODIAL INTERROGATIONS ARE VOLUNTARY, AS REQUIRED BY THE FIFTH AMENDMENT.

Dickerson, the Government, and supporting *amici* argue that *Miranda* provides federal law enforcement officers with "bright line" rules to assist them in questioning suspects.[25] They contend further that officers would be plagued by uncertainty when they questioned a subject if section 3501 controlled the admissibility of confessions, because the officers would not be able to predict what factors a court might consider in examining the totality of the circumstances surrounding the confession.[26] This argument ignores the fact that even under *Miranda*, a federal law enforcement officer must be prepared for a totality of the circumstances analysis. Although the *Miranda* procedural safeguards serve as a useful guide for law enforcement, it is a fallacy to suggest that law enforcement officers, simply by following *Miranda*, can ensure that suspects' confessions will be admitted into evidence.[27] The voluntariness standard established by the Fifth Amendment remains the fundamental criterion for admission.

Before any self-incriminating statement can be admitted in federal court, a trial judge must determine both (1) *Miranda* compliance (including whether there was a waiver) and (2) the voluntariness of the statement for due process

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[25] *See* Petitioner's Brief at 43; Brief of United States at 50; Bell Brief at 12.

[26] *See* Brief of United States at '38; Brief of House Democratic Leadership at 7.

[27] *See* Bell Brief at 12, 19.

purposes.[28] At the behest of the defendant, a court will make both determinations. If an officer complied with *Miranda*, the court must consider a defendant's remaining voluntariness arguments. *See New York v. Quarles*, 467 U.S. 649, 672 & n.5 (1984). On the other hand, if the officer violated *Miranda*, the court still must determine the voluntariness of the statement, because voluntariness governs the use of the statement for impeachment purposes, *see New Jersey v. Portash*, 440 U.S. 450, 458-59 (1979), and affects the "fruits of the poisonous tree" analysis, *see Oregon v. Elstad*, 470 U.S. 298, 306-09 (1985). In this case, for example, the District Court found a violation of *Miranda* and thus excluded the confession from the government's case-in-chief, J.A. 155, but still went on to determine that Dickerson's confession was voluntary and thus did not require suppression of the evidence found as a result of the confession, J.A. 158 n.1. A determination of voluntariness is based on the totality of the circumstances surrounding the confession, *see Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973), the same analysis used in section 3501.

Because suppression hearings are routine events in cases involving confessions, law enforcement officers must do more than simply afford the suspect the proper procedural safeguards. Under both *Miranda* and section 3501, an officer must take into consideration the myriad factors a court might evaluate in determining voluntariness based on the totality of the circumstances.[29] Despite the parties'

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[28] *See, e.g., Miller v. Fenton*, 474 U.S. 104, 109-10 (1985) (despite *Miranda* warnings being given, a court must still ask whether confession was voluntary under the due process clause); *United States v. Brown*, 531 F. Supp. 37, 39 (D. Mont. 1981) ("even in the event the required warnings are given, the prosecution is still required to show that a confession was voluntary under the due process standards").

[29] These factors include all of the "pre-*Miranda* factors" identified by the Bell Brief as bearing on the voluntariness inquiry. Bell Brief at 14 n.14. The Bell Brief appears to suggest that these factors are no longer

claims about the complications federal law enforcement officers would face under section 3501, it is clear that the burden on officers would not materially change. If anything, section 3501 lessens the burden on federal law enforcement officers by allowing them to focus their efforts on ensuring that confessions are voluntary, rather than worrying about whether a technical violation of a procedural safeguard will result in the suppression of crucial evidence. Thus, section 3501 enhances protection for suspects' constitutional rights without undermining the bright line guidance offered by the core *Miranda* safeguards.

III. SECTION 3501 REMEDIES THE EXCESSES OF *MIRANDA*'S EXCLUSIONARY RULE.

The FBIAA, following the lead of the FBI, supports the continued use of *Miranda*'s core procedural safeguards in an effort to protect individuals' constitutional rights.[30]

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relevant under the "bright-line rules" of *Miranda*. *Id.* at 12-19. This argument is contravened by the fact that federal courts routinely consider the factors identified by the Bell Brief as "pre-*Miranda*" in determining whether to admit confessions into evidence, even when all of the *Miranda* procedural safeguards have been followed. *See, e.g., United States v. Dale*, 44 F. Supp. 2d 818, 820 (E.D. Tex. 1999) (finding oral statements voluntary after consideration of alleged threats and alleged denials of requested counsel by law enforcement agents); *United States v. Wyatt*, No. 97-40083-01-RDR, 1998 WL 45004, at *3 (D. Kan. Jan. 13, 1998) (considering whether defendant was under the influence of drugs or alcohol when he made his statements after receiving *Miranda* warnings); *United States v. Arrington*, No. 97CR192, 1997 WL 754051, at *1-2 (N.D. Ill. Nov. 21, 1997) (rejecting defendant's argument that alleged threats against wife rendered his confession involuntary), *aff'd*, 159 F.3d 1069 (7th Cir. 1998), *cert. denied*, 119 S. Ct. 1512 (1999); *United States v. Berkovich*, 932 F. Supp. 582, 587 (S.D.N.Y. 1996) (finding statements voluntary based, among other things, on assessment of defendant's intelligence and the location of the interrogation).

[30] The FBIAA fully supports the FBI's policy positions outlined in the FBI Memorandum discussed above. *See supra* note 17 and

However, the exclusionary rule established by *Miranda*, and expanded in subsequent cases, is overinclusive because it results in confessions being suppressed when there has been no violation of a constitutional right. Confessions are often thrown out because of "technicalities,"[31] *i.e.*, failures to follow the letter of *Miranda*'s safeguards. The effect has been to limit unduly law enforcement's ability to fight crime, while allowing the release of confessed criminals back into society.

Section 3501 makes for better law enforcement policy because it would continue to exclude confessions when the court finds a constitutional violation, but would not exclude confessions that are found to have been given voluntarily despite the existence of technical departures from *Miranda*'s core safeguards. This remedies some of the anomalous results stemming from *Miranda*'s exclusionary rule and parallels the applications of the exclusionary rule in other criminal procedure contexts.

A. *Miranda*'s Exclusionary Rule Has Resulted in the Suppression of Voluntary Confessions.

The Fifth Amendment right against self-incrimination guarantees each individual "the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will.'" *Miranda*, 384 U.S. at 460 (quoting *Malloy v. Hogan*, 378 U.S. 1, 8 (1964)). Protection of this Fifth Amendment right was at the heart of the Court's concerns in *Miranda* and was the reason for creating a system of procedural safeguards to assure that involuntary confessions are not used in criminal trials. *Miranda*, 384 U.S. at 439 ("[W]e

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accompanying text. The FBIAA also supports the policies outlined in the FBI's *Legal HandBook for Special Agents*. *See supra* Part I.B.

[31] *Dickerson*, 166 F.3d at 692.

deal with . . . his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.").[32]

To give teeth to its protective scheme, *Miranda* established an exclusionary rule that requires adherence to *Miranda*'s procedural safeguards as a "prerequisite[] to the admissibility of any statement made by a defendant." *Miranda*, 384 U.S. at 476. The *Miranda* exclusionary rule, however, is broader than is needed to protect a suspect's Fifth Amendment rights – sweeping away any confession that is given in violation of *Miranda*'s procedural safeguards without regard for the voluntariness of the confession. The result is that in some situations a confession is suppressed without any finding by a district court that a constitutional violation, in fact, has occurred.[33]

The overbreadth of this rule creates pitfalls for law enforcement.[34] An agent who inadvertently departs from

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[32] While the procedural safeguards established by *Miranda* include a warning that the criminal suspect has the right to speak to a lawyer, the purpose of this warning is to protect the Fifth Amendment right against self-incrimination, rather than the Sixth Amendment right to counsel. *See Miranda*, 384 U.S. at 465-66 (a lawyer's presence "would insure that statements made in the government-established atmosphere are not the product of compulsion"); *see also United States v. Davis*, 512 U.S. 452, 456 (1994) ("The Sixth Amendment right to counsel attaches only at the initiation of adversary criminal proceedings . . . .").

[33] The Court has repeatedly held that a violation of *Miranda*'s procedural safeguards does not necessarily mean that a resulting confession is involuntary, and hence in violation of the Fifth Amendment. *See, e.g.*, *Withrow v. Williams*, 507 U.S. 680, 705-07 (1993) (O'Connor, J., concurring in part and dissenting in part); *Oregon v. Elstad*, 470 U.S. 298, 306-10 (1985); *New York v. Quarles*, 467 U.S. 649, 672 & n.5 (1984); *Michigan v. Tucker*, 417 U.S. 433, 444-46 (1974).

[34] In its brief, the Government acknowledges that there have been costs to law enforcement from the exclusionary rule, but states in a conclusory fashion that the exclusionary rule does not impede law enforcement unduly. *See* Brief of United States at 31-32. The brief dismisses

Miranda's procedural safeguards before a suspect voluntarily confesses will see that confession suppressed at trial, even if the agent did not violate the suspect's constitutional rights.[35] As detailed above, the facts of this case are a pointed example of this pitfall. Although the Government presented evidence that Dickerson was properly given his *Miranda* warnings, the District Court found that *Miranda*'s technical requirements had not been followed and suppressed Dickerson's confession, despite the fact that it was voluntary. *See Dickerson*, 166 F.3d at 675-77.

The exclusionary rule is especially harmful in the context of questioning suspects after they have requested the assistance of counsel.[36] In *Miranda*, the Court held that if a suspect "states that he wants an attorney, the interrogation must cease until an attorney is present" and the attorney must be "present during any subsequent questioning." *Miranda*,

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research to the contrary and overlooks the experiences of law enforcement officials who have spoken out against the exclusionary rule and have criticized *Miranda* for "interfer[ing] with the ability of police officers to solve violent crimes and take dangerous criminals off the streets." *Voluntary Confessions and the Enforcement of Section 3501, Title 18, U.S. Code: Hearings Before the Subcomm. on Criminal Justice Oversight of the Senate Comm. on the Judiciary*, 1999 WL 16947867 (May 13, 1999) (Testimony of Gilbert G. Gallegos, President Grand Lodge, Fraternal Order of Police) (the exclusionary rule under *Miranda* "prevents the use of any information obtained if there is the slightest hint of noncompliance").

[35] *See, e.g., United States v. Elie*, 111 F.3d 1135, 1139, 1142 (4th Cir. 1997) ("On appeal, the Government does not contend that the district court erred in suppressing the statements Elie made prior to receiving his *Miranda* warnings."; "[Defendant's] statement was voluntary under the Fifth Amendment."); *United States v. DeSumma*, 44 F. Supp. 2d 700, 705-06 (E.D. Pa. 1999); *United States v. Rodriguez-Cabrera*, 35 F. Supp. 2d 181, 185-87 (D. Puerto Rico 1999).

[36] The FBI and the DEA have voiced similar concerns in their memoranda submitted to the Court by the Government. *See* FBI Memorandum, *supra* note 17, at 1-2; 1998 DEA Memorandum, *supra* note 22.

384 U.S. at 474. In *Edwards v. Arizona*, 451 U.S. 477 (1981), *Arizona v. Roberson*, 486 U.S. 675, 682-83 (1988), and *Minnick v. Mississippi*, 498 U.S. 146 (1990), the Court created a "'second layer of prophylaxis'" regarding a suspect's request for the assistance of counsel, *see United States v. Davis*, 512 U.S. 452, 458 (1994).[37] In these cases, the Court held that once counsel has been requested, law enforcement is forbidden from ever questioning the suspect again unless an attorney is present, even if the suspect is again given *Miranda* warnings and voluntarily responds to subsequent questioning, or already has had the opportunity to consult with an attorney.[38] Even if the later interrogation relates to another crime and is conducted by a different set of law enforcement officers, any confessions must be excluded because of the invocation of the right to counsel in the earlier, unrelated context.[39]

The effect of these cases has been to render many suspects "question proof" because of the threat that any

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[37] The Government, while recognizing the harmful effects of these cases, argues that addressing the extensions of *Miranda* found in this line of cases should be saved for another day. *See* Brief of United States at 35-36. This fails to recognize that any decision on the validity of section 3501 necessarily implicates the decisions in *Edwards*, *Roberson*, and *Minnick* because section 3501 directs that courts "shall" admit into evidence voluntary confessions, whether or not suspects request the assistance of counsel. Of course, whether law enforcement officers honor such requests will most assuredly bear on the issue of voluntariness (or the lack thereof). *See* 18 U.S.C. § 3501(b) (court must consider "whether or not [the] defendant was without the assistance of counsel when questioned and when giving [the] confession").

[38] *See Minnick*, 498 U.S. at 151-52; *Edwards*, 451 U.S. at 484-85; *see also* LaFave & Israel, *supra* note 15, § 6.9, at 345 (*Edwards* is "best viewed as creating a *per se* rule proscribing any interrogation of an accused who has invoked his right to counsel").

[39] *See Roberson*, 486 U.S. at 682-83 (applying the "prophylactic *Edwards* rule" to a "police-initiated interrogation following a suspect's request for counsel . . . in the context of a separate investigation").

confession made after the suspect has requested the advice of counsel will be suppressed, even if there is no finding that the confession was involuntary.[40] Years may elapse, and if the assistance of counsel has been invoked once, law enforcement may never have a chance to question that person again, unless the suspect arranges for counsel to be present.[41] Suspects, knowing that they can speak with impunity if counsel is not present, have little incentive to arrange for the presence of counsel. Moreover, when more than one law enforcement agency is investigating the same person, there is the risk that one agency may not know that the suspect has invoked the assistance of counsel during previous questioning by another agency.[42] The unsuspecting officer may then elicit a confession that will later be suppressed, despite the fact that it was completely

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[40] The FBI agrees that this is a significant problem for its agents. *See* FBI Memorandum, *supra* note 17, at 1-2.

[41] An extreme example of this application of *Miranda*'s exclusionary rule occurred in *United States v. Green*, 592 A.2d 985 (D.C. 1991), *cert. granted*, 504 U.S. 908 (1992), *cert. dismissed as moot*, 507 U.S. 545 (1993). There, a suspect invoked his right to counsel during questioning by federal law enforcement about possession of a controlled substance. He eventually pled guilty and was incarcerated. Over five months after invoking his right to counsel, and while in prison, local law enforcement obtained an arrest warrant for the suspect, charging him with involvement in a robbery and murder that were unrelated to his conviction for drug possession. After being read his *Miranda* rights by local law enforcement and having waived the assistance of counsel, he confessed to his involvement in the robbery and murder. At trial, his confession was suppressed because he had asked for a lawyer in connection with the initial drug charge. *See id.* at 985-87 (relying on *Minnick*). The D.C. Court of Appeals affirmed. *See id.* at 991 (applying *Edwards*, *Roberson*, and *Minnick*, and stating that if there is a limiting aspect to these cases that would allow questioning in this circumstance, it is up to this Court to identify that "red thread").

[42] *See Roberson*, 486 U.S. at 678 (suspect was questioned a second time by an officer who "was not aware of the fact that [the suspect] had requested the assistance of counsel three days earlier").

voluntary.[43] Even a waiver at the beginning of the second round of questioning cannot undo the suspect's earlier invocation of his rights.[44]

Our society pays a high price for the suppression of confessions based on such "technicalities," namely the release of confessed criminals. While society expects the constitutional rights of suspects to be protected,[45] society also expects that the justice system will not allow confessed criminals, whose constitutional rights have been respected, to go unpunished based on "technicalities."[46]

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[43] *See* FBI Memorandum, *supra* note 17, at 2 ("[T]he protections [outlined in these cases] complicate the right to counsel rule since it is often difficult for law enforcement officers to discern and comply with those protections. As a result, completely voluntary statements may get suppressed because of technical violations of *Miranda* and its progeny.").

[44] *See Green*, 592 A.2d at 986 (after being given *Miranda* warnings before second round of questioning, suspect waived the assistance of counsel). The Court's cases in the area of requests for assistance of counsel stand in sharp contrast to its cases dealing with a suspect who invokes the right to remain silent. In the latter situation, officers must "'scrupulously honor[]'" such a request, but are permitted to question a suspect again about a different criminal matter as long as a sufficient period of time has passed after the first round of questioning ceased (a matter of hours may be permissible) and *Miranda* warnings are given again when questioning resumes. *See Michigan v. Mosley*, 423 U.S. 96, 102-06 (1975) (no passage in *Miranda* "can sensibly be read to create a *per se* proscription of indefinite duration upon any further questioning by any police officer on any subject, once the person in custody has indicated a desire to remain silent").

[45] *See* Petitioner's Brief at 44-45; Brief of United States at 49; Bell Brief at 24-25.

[46] The Court has recognized the need to consider society's interests in an effective law enforcement policy that prevents criminals from being released based on such "technicalities":

> [W]e also "must consider society's interest in the effective prosecution of criminals in light of the protection our pre-*Miranda* standards afford criminal defendants." These interests

B. Section 3501 Will Prevent Voluntary Confessions from Being Suppressed.

The virtue of section 3501 is that it remedies the excesses of *Miranda*'s exclusionary rule, while still providing incentives for law enforcement to adhere to *Miranda*'s procedural safeguards.[47] Section 3501 does not completely eliminate *Miranda*'s exclusionary rule.[48] Rather section 3501 simply tempers the rule to exclude confessions only when the Fifth Amendment has in fact been violated, rather than employing an irrebuttable presumption that every time the procedural safeguards are not followed, an ensuing confession is involuntary.[49] Under section 3501, oversights and harmless mistakes by law enforcement will no longer be grounds for throwing out voluntary confessions.

Placing the trigger for section 3501's exclusionary rule on the finding of a constitutional violation also brings it into harmony with the application of the exclusionary rule in other criminal procedure contexts. For example, the fruits of an illegal search are generally only excluded when the court finds that "evidence [has been] obtained in violation of the Fourth Amendment." *Illinois v. Krull*, 480 U.S. 340, 347 (1987).[50] The same is true with regard to the right to counsel,

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may be outweighed by the need to provide an effective sanction to a constitutional right, but they must in any event be valued.

Tucker, 417 U.S. at 450-51 (citations omitted).

47 *See supra* Parts I and II.

48 *See* 18 U.S.C. § 3501(a) (confessions are only admissible if "voluntarily given").

49 *Compare id. with Miranda*, 384 U.S. at 444 ("[T]he prosecution may not use [confessions] . . . unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.").

50 *Cf.* LaFave & Israel, *supra* note 15, § 3.1(e), at 114 (evidence may also be suppressed if a federal or state statute or administrative regulation

where the trigger for excluding evidence is an actual violation of the Sixth Amendment. *See, e.g., United States v. Bierey*, 588 F.2d 620, 623 (8th Cir. 1978) ("[O]nce it is shown that the lineup was conducted in violation of an accused's sixth amendment right to counsel, all evidence of the pretrial confrontation and of the subsequent in-court identification by the witness is to be excluded . . . ."). In contrast, under the *Miranda* exclusionary rule, the trigger for the suppression of evidence is the violation of a prophylactic safeguard. *See Elstad*, 470 U.S. at 307.

Section 3501 also creates consistency among the various applications of the exclusionary rule in the Fifth Amendment context. The Court has held that "in situations that fall outside the sweep of the *Miranda* presumption," *Elstad*, 470 U.S. at 307, such as when prosecutors seek to introduce evidence that was discovered as a result of a confession given without *Miranda* warnings, *see, e.g., Tucker*, 417 U.S. at 435, 448-50, "'the primary criterion of admissibility [remains] the "old" due process voluntariness test,'" *Elstad*, 470 U.S. at 307-08 (quoting Schulhofer, *Confessions and the Court*, 79 Mich. L. Rev. 865, 877 (1981)) (alterations in original). Section 3501 creates a single test to deal with all confessions and the fruits therefrom – *i.e.*, whether there was a violation of the Fifth Amendment prohibition against involuntary self-incrimination.

In short, section 3501 reins in the exclusionary rule to reach only those confessions elicited in violation of the suspect's Fifth Amendment rights.

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has been violated, but even then the exclusionary rule does not "inevitably follow").

CONCLUSION

For the foregoing reasons, the Court should affirm the Fourth Circuit's decision that 18 U.S.C. § 3501 governs the admission of voluntary confessions in federal criminal cases.

Respectfully submitted,

Of Counsel
LYLE ROBERTS
1806 W. Abingdon Dr.
Apt. 202
Alexandria, VA 22314

ROBERT F. HOYT
Counsel of Record
KARAN BHATIA
HESTER PEIRCE
CHRISTOPHER SIMKINS
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Counsel for Amicus Curiae

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